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10/626,304	07/24/2003	Aaron Strand	8362-CIP-CIP-DIV	1940

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REINHART BOERNER VAN DEUREN S.C.  
ATTN: LINDA KASULKE, DOCKET COORDINATOR  
1000 NORTH WATER STREET  
SUITE 2100  
MILWAUKEE, WI 53202

EXAMINER

THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/626,304	STRAND ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Viren Thakur	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 138-144 and 146-186 is/are pending in the application.
- 4a) Of the above claim(s) 138, 139, 146 and 147 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 140-144 and 148-186 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/8/04, 7/24/03</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 138-139 and 146-147, drawn to a method for manufacturing a bag, classified in class 53.
  - II. Claim 140-144 and 148-186, drawn to a reclosable bag for holding a food product, classified in class 426.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the invention of Group II can be made by another and materially different process other than as recited in Group I. For example, the reclosable bag can be comprised from only one sheet of web material. The gusseted portion can additionally be formed by folding or by adding an additional webbed material into the parent sheet of web material.

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3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification and thus would require a different field of search, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Leslie Miller on November 7, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 140-144 and 148-186. Affirmation of this election must be made by applicant in replying to this Office action. Claims 138-139 and 146-147 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

5. Claim 173 and 181 objected to because of the following informalities:
  - a. Line 2 of claim 173 recites the phrase "at last." This is considered a spelling mistake and should read "at least." Appropriate correction is required.

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- b. Line 7 of claim 181 recites the phrase "means for filing." This is considered a spelling mistake and should read, "means for filling." Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

- 6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 7. Claims 143, 167, 171, 170 and 180 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - a. Claim 143 recites the limitation "at least a portion." It is unclear as to how much of the two opposed surfaces comprises an adhesive in order to be considered at least a portion.
  - b. Claim 167 recites the limitation "micro perforations." It is unclear as to what defines a perforation as being a micro perforation, since any small perforation can be considered a micro perforation.
  - c. Claim 171 recites the limitation "generally opposite." It is unclear as to what orientation will describe the means for filling as being generally opposite to the fold structure.

- d. Claim 170 recites the limitation "said reclosable fastener structure" in line 10 of the claim. There is insufficient antecedent basis for this limitation in the claim. Thus it is unclear as to which structures said reclosable fastener structure refers.
- e. Claim 180 recites the limitation "substantially opposite." It is unclear as to how much is considered substantial in order to deem the gusseted portion substantially opposite said means for reclosably sealing the bag.

***Claim Rejections - 35 USC § 102***

- 2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- 3. Claims 148-160, 164-169, 171-176 and 183-185 are rejected under 35 U.S.C. 102(b) as being anticipated by Herber et al. (US 5525363). Regarding

claims 148-160, 164-167, 174 and 83-185, Herber et al disclose a pre-packaged cheese bag (Column 5, Lines 48-61) comprising at least one sheet of web material (Figure 18, Item 204) having a fold (Figure 18, Item 232) and an opening located opposite said fold (Column 2, Line 66 to Column 3, Line 1); reclosable fastener structure comprising two releasable engageable tracks (Figure 18, Item 218, Item 220) opposite said fold (Figure 18, Item 232) each including integral skirt structures of skirt web material extending therefrom (Figure 18, Items 210 and 212 and See Below Items 218 and 220); said skirt structure including distal margins (Figure 18, See adjacent to Item 226 and Item 238) being coupled to said web material on opposite sides of reclosable bag at opposite locations between areas of structural weakness (Figure 18, Item 214). Herber et al. further disclose wherein said integral skirt includes an outside and inside surface. The outside surface of said skirt structures is sealed to said sheet of web material. The inside surface faces toward the interior space of said bag. Herber et al. disclose a peelable seal (Figure 18, Item 264; Column 8, Lines 56-65; Column 20, Lines 30-39; Column 12, Line 66 to Column 13, Line 7) formed on the inside surface. Since a peelable seal is formed between said skirt structures when said skirt structures are joined together is known that the opposing interior facing sides of the skirt structure must adhere to each other. The pre-packaged cheese bag of Herber et al. discloses a parent film having predetermined dimensions (Figure 18, Item 204); wherein the fold structure (Figure 18, Item 232) is located between two areas of structural weakness (Figure 18, Item 254). With further

regard to claims 159 and 160, the predetermined dimension can be the length or the width depending on the side that which the bag rests. Additionally, the predetermined dimension can be the length and can be the width depending on the orientation of the bag and the choice of whether the bag is wider than it is long or longer than it is wide. Since the perforation extends around the entire bag both sides of the bag comprise structural weakness. Herber et al. disclose wherein said structural weakness is integral to said web (Column 10, Lines 47-52) and extend linearly (Column 10, Lines 47-52). It is interpreted that in making the perforations, said web material is scored. Additionally, said perforations are considered micro perforations. Regarding claim 171, since Herber et al. disclose a pre-packaged cheese bag it is inherent that said bag is for filling with at least one food product. Herber et al. further disclose a barrier web material (Figure 18, Item 39a and 39b) that extends between and is coupled to said distal margin structures. Regarding claims 168-169, 172-173, and 175-176, said reclosable fastener structure (Figure 18, Items 214 and 216) extends past said areas of structural weakness (Figure 18, Item 254). Since the fold structure is defined by said structural weakness, and since said reclosable fastener structure extends past said area of structural weakness, then said reclosable fastener structure thus extends into said fold structure. This is in contrast to the *entire* reclosable fastener structure extending past said areas of structural weakness. (When submitting amendments Applicant is cautioned to include the proper support for any or all amendments to the claim limitations.)



4. Claims 140-142, 144, 171, 180, 181 are rejected under 35 U.S.C. 102(e) as being anticipated by Stolmeier et al. (US 6257763). Regarding claims 140-142, 144, 180 and 181, Stolmeier et al. disclose a reclosable bag capable of being filled with a food product (Column 3, Lines 40-48), comprising at least one sheet of web material (Column 2, Lines 57-67); a reclosable fastener structure (Figure 11, Item 122 and 125) including a skirt structure extending therefrom (Figure 11, Item 81); said skirt structure including a distal margin (Figure 11, Not labeled – see bottom of items 122 and 125); said distal margin being coupled to said web material (Figure 11, Item 91) at a predetermined location; a gusseted structure (Figure 11, Item 101 and bottom of bag) located opposite said reclosable fastener structure (Figure 11); an opening located between said reclosable fastener structure and said gusseted structure. Said bag is a mercantile package that has edges of said web material that are fused together (Column 2, Lines 57-67; Column 3, Lines 40-48). Stolmeier further discloses wherein said bag is pre-filled with a product and then marketed such that the consumer needs to rupture the seal in order to access the contents within the bag, thus providing tamper evidence (Column 3, Lines 40-48). Additionally, since the bag of Figure 11 is a continuous sheet of material the only way for said bag to be filled with a product is through the side edges of the bag. Therefore, filling in this way discloses an opening between the fastener structure and the gusset. Regarding claim 171, Stolmeier et al. further disclose at least one sheet of web material having at least

one fold structure (Figure 11, Item 101, Item 100, and bottom of bag) presenting at least two sidewall structures (Figure 11, Item 112 and 113) having inside surfaces and a barrier web material (Figure 11, Item 100) extending between and coupled to said distal margin structures (Figure 11, See bottom of item 122 and 125). As a result of the 112, 2<sup>nd</sup> paragraph rejection above, by filling through the side edge, said means for filling is generally opposite said fold structure.

Regarding claim 180, Stolmeier et al. further disclose a gusseted portion (Figure 11, Item 101, Item 100 and see bottom of bag) substantially opposite said means for reclosably sealing.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 178, 182 and 186 rejected under 35 U.S.C. 103(a) as being unpatentable Stolmeier et al. (US 6257763).

Regarding claim 178, 182 and 186, the above-applied embodiment of Stolmeier et al. are silent in teaching two areas of structural weakness having at least one fold structure located between and defined by said two areas of structural weakness. However, an alternate embodiment of Stolmeier et al. teaches two areas of structural weakness (Figure 7B, Item 72) having at least one fold structure located between and defined by said two areas of structural weakness (Figure 7B, Item 60) and wherein said means for reclosably sealing said bag (Figure 7B, Item 70) extends past said areas of structural weakness (Figure 7B, Item 72) and into said fold structure. The areas of structural weakness define a predetermined tear area, as recited in instant claim 186. This embodiment of Stolmeier et al. provides evidence of extending the fastener structures into the fold structure of the bag. Such a modification provides another means for ensuring tamper evidence to the sealed bag (Column 3, Line 62 to Column 4, Line 1). Upon removal of the fold area, the fastener structures are completely exposed, thus allowing for easier operability by the consumer. Such a modification would prevent the consumer from having to separate the web material in order to access the fastener structures.

8. Claims 143 and 179 are rejected under 35 U.S.C. 103(a) as being unpatentable Stolmeier et al. (US 6257763) in view of May (US 5725312). Stolmeier et al. disclose as applied above. Stolmeier et al. are silent in teaching a backing strip located opposite said opening and between said inside surface and said opening. May teaches various means for attaching the fasteners to the bags (See Figures), which include a backing strip (e.g. in Figures 15 and 16) for the purpose of providing a secondary seal to hermetically seal the package (Figures 15 and 16; Column 18, Lines 60-67 in light of Column 20, Line 25 to Column 21, Line 8). Therefore to include a backing strip opposite the opening and between the inside surface and the opening that extends below the lower portion of said inside surface would have been an obvious result effective variable of the desired seal of the bag, since May teaches that this helps to hermetically seal the bag. One would have been substituting one conventional reclosable bag fastener for another for the same purpose.
9. Claims 170 and 177 are rejected under 35 U.S.C. 103(a) as being unpatentable Herber et al. (US 5525363) in view of Boeckmann et al. (US 4846585). Herber et al. disclose as cited above. Herber et al. further teach sealing the web material above the fastener structures and providing a tear area along said seal (Column 6, Lines 18-38) and subsequently teach providing a hermetic seal across the entire length of the web material (Column 15, Lines 22-34). Therefore, it would have been obvious that Herber et al. teach providing hermetic seals across all

sealed areas of the bag. Hermetic sealing is well known to one having ordinary skill in the art for preserving the freshness of the product disposed within a bag. However, Herber et al. are silent in teaching at least one tear tape structure and wherein said distal margin is coupled to said enclosing means at, at least one location between said tear tape structure and said opening. Boeckmann et al. teach food bags with reclosable fasteners with a tamper evident area of perforation lines. In order to maintain a hermetically sealed environment, Boeckmann et al. provide a tear tape adjacent the perforation lines (Column 1, line 5 to Column 2 line 17, Column 3, lines 23-48). Therefore, it would have been obvious to further modify Herber et al. and include a tear tape adjacent the lines of perforation since Herber et al. teach hermetically sealed, perforated closures and Boeckmann et al. teach tear tapes placed adjacent to the perforation lines of a reclosable food bag will seal the perforation lines and maintain a hermetically sealed environment. Such a modification ensures the freshness of the product disposed within.

10. Claims 161-163 are rejected under 35 U.S.C. 103(a) as being unpatentable Herber et al. (US 5525363) in view of Hayashi (US 6074097). Herber et al. disclose as cited above, but are silent in teaching a non-linear structural weakness across a predetermined dimension of said sheet of web material. Hayashi et al. also teach reclosable bags with an area of weakness (Column 20, Lines 10-26). Hayashi et al. is relied on as evidence of the conventionality of

providing a non-linear structural weakness (i.e. not a straight line), for opening a bag (Column 18, Lines 31-40; Figure 10). Hayashi et al. teach the preferred non-linear length and width (Figure 10, Item 106). Therefore, it would have been obvious to further modify Herber et al. and include a non-linear line of weakness at a predetermined length and width since Hayashi et al. teach that providing non-linear tear path provides greater tear strength and control. Such a modification will ensure that the tearing of the area above the structural weakness will be controlled and will not remove more of the web material than intended by the manufacturer.

### ***Double Patenting***

11. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

12. Claims 148-167, 184 and 185 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 118-137 of copending Application No. 10/358741. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 175-176 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 75-76 of copending Application No. 09/774275. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 75-76 of copending Application No. 09/774275 encompass the limitations of claims 175-176 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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15. Claim 177 and 186 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 96, 116, 138, 140, 141 and 150 of copending Application No. 09/774275. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 96, 116, 138, 140, 141 and 150 of copending Application No. 09/774275 encompass the limitations of claims 177 and 186 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

16. Claims 140, 141, 142, 143, 178 and 179 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 6 and 26 of U.S. Patent No. 7101079. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 5, 6 and 26 of U.S. Patent No. 7101079 encompass the limitations of claims 140, 141, 142, 143, 178 and 179 of the instant application.

17. Claims 180-182 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 26 of U.S. Patent No. 7101079. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 26 of U.S.



Patent No. 7101079 encompass the limitations of claims 180-182 of the instant application.

18. Claim 144 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 26 of U.S. Patent No. 7101079. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 26 of U.S. Patent No. 7101079 encompass the limitations of claim 144 of the instant application.
19. Claim 183 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 118 of copending Application No. 10/358741. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 118 of copending Application No. 10/358741 encompasses the limitations of claim 183 of the instant application. Since the bag of copending Application No. 10/358741 is a prepackaged bag comprising at least one reclosable fastener structure, it would have been obvious that said reclosable fastener structure is a means for reclosably sealing said bag.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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20. Claims 148-152, 154-160, 164-166 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 75, 79, 82-86, 93 of copending Application No. 09804403. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to a prepackaged cheese bag with a reclosable structure having an integral distal portion that extends beyond a linear perforated or scored tear area and into a fold structure.

With respect to claims 149 and 151, since '403 claims the fastener is distally located from the fold, this includes the opposite fold.

With respect to claim 153, although '403 claims the skirt structure is integral and not coupled per se, once it was known to attach a skirt structure, to select any particular means of attachment integrally or coupling would have been obvious, depending on the particular method of forming and attaching the fastener.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

21. Claim 168 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09804403. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of copending

Application No. 09804403 encompasses the limitations of claim 168 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

22. Claim 169 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 21 of copending Application No. 09804403. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 21 of copending Application No. 09804403 encompasses the limitations of claim 169 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

23. Claims 172-176 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 21, 23, 41, 61, 104, 125 and 144 of copending Application No. 09804403. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 21, 23, 41, 61, 104, 125 and 144 of copending Application No. 09804403 encompasses the limitations of claims 172-176 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

24. Claim 177 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 125, 140 of copending Application No. 09804403. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 125 and 140 of copending Application No. 09804403 encompasses the limitations of claim 177 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

25. Claims 178 and 180-182 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 21, 23, 41, 61, 104, 125 and 144 of copending Application No. 09804403 in view of Kraus (US 3380481). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 21, 23, 41, 61, 104, 125 and 144 of copending Application No. 09804403 encompasses the limitations of claims 178 and 180-182 of the instant application. Although the claims of the copending Application do not recite having a gusset, Kraus is relied on as evidence of the conventionality of reclosable bags optionally including a

folded end that comprises a gusset and is opposite the opening (See Figures 1 and 20, column 1, lines 18-57; Column 2, Lines 40-63; Column 6, Lines 20-47).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

26. Claims 161-163 and 167 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 75, 79, 82-86, 93 of copending Application No. 09804403 in view of Hayashi et al. (US 6074097). '403 claims a linear area of weakness comprising perforations, but does not claim micro perforations as recited in claim 167 or non-linear structural weakness as recited in claims 161-163.

Hayashi et al. also teach reclosable bags with an area of weakness (Column 20, Lines 10-26). Hayashi et al., however, teach providing a non-linear area (i.e. not a straight line) for opening a bag (Column 18, Lines 31-40; Figure 10) with a non-linear length and width (e.g. Item 106 in Figure 10) formed by micro-perforations to provide greater tear strength and a more easily controlled line of weakness (Column 13, Lines 35-Column 14, Line 12). Therefore, it would have been obvious to modify '403 and include a non-linear perforation of at a predetermined length and width as recited in claims 161-163, formed by micro perforations as recited in claim 166, since Hayashi et al. teach this combination provides greater tear strength and a more easily controlled line of weakness.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

27. Claims 140-142, 144, 168-169 and 172-175 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 111 of copending Application No. 10300355. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 111 of copending Application No. 10300355 encompasses the limitations of claims 140-142, 144, 168-169 and 172-175 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

28. Claims 178 and 180-182 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 111 of copending Application No. 10300355 in view of Kraus (US 3380481). Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 111 of copending Application No. 10300355 encompasses the limitations of claims 178 and 180-182 of the instant application. Although the claims of the copending Application do not recite having a gusset, Kraus is relied on as evidence of the conventionality of reclosable bags optionally including a folded end that comprises a gusset and is opposite the opening (See Figures 1 and 20, column 1, lines 18-57; Column 2, Lines 40-63; Column 6, Lines 20-47).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

29. Claim 168-169 and 172-175 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6913387. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 18 of U.S Patent No. 6913387 encompasses the limitations of claims 168-169 and 172-175 of the instant application.
30. Claim 168-169 and 172-175 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 47 of U.S. Patent No. 6910806. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 47 of U.S Patent No. 6910806 encompasses the limitations of claims 168-169 and 172-175 of the instant application.
31. Claim 168-169 and 172-175 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3, 4, 10, 11, 15, 17, 20, 43, 44, 50, 51, 55, 57, 60, 84, 89, 94 and 99 of copending Application No. 10300487. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 3, 4,

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10, 11, 15, 17, 20, 43, 44, 50, 51, 55, 57, 60, 84, 89, 94 and 99 of copending Application No. 10300487 encompasses the limitations of claims 168-169 and 172-175 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

32. Claim 168-169 and 172-175 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 84, 89, 94 and 99 of copending Application No. 10300609. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 84, 89, 94 and 99 of copending Application No. 10300609 encompasses the limitations of claims 168-169 and 172-175 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

33. Claim 170 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 84, 85, 89, 90, 94, 95, 99 and 100 of copending Application No. 10300609. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 84, 85, 89, 90, 94, 95, 99 and 100 of copending Application No. 10300609 encompasses the limitations of claim 170 of the instant application.



This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3380481 discloses a flexible pouch comprising a gusset and releasable fastener structures. US 3438567 discloses a flexible pouch with a bottom gusset having hermetic seals. US 4428788 discloses attaching fasteners by coupling skirt structures. US 4582549 discloses a method for making a bag material having recloseable structures wherein said bag is comprised from a continuous length sheet. US 6149302 discloses a bag having tamper evidence feature including an adhesive flap that folds to cover the mouth of the bag. Additionally included are reclosable fasteners. US 4691372 discloses bags having reclosable fasteners and a perforate tear area. US 5456928 discloses tamper evident, hermetically sealed bag comprising reclosable fastener structures. US 6347437 discloses arrangements for reclosable zippers within a fold structure of a bag. US 6829873 discloses a slider fastener structure and openings for filling a bag.

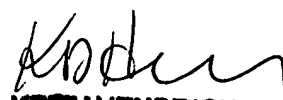
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Viren Thakur  
Examiner  
Art Unit: 1761



**KEITH HENDRICKS**  
**PRIMARY EXAMINER**